

FILED 08 AUG 11 14:13 USDC-ORM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Gary E. Conmy,

Civil No. 07-1511-CL

Plaintiff,

ORDER

v.

Commissioner, Social Security Administration,

Defendant.

CLARKE, Magistrate Judge:

Plaintiff has filed a motion to voluntarily dismiss counts of the complaint relating to FOIA, counts 2 and 3 (#20).¹ The parties have executed written consents to entry of judgment by a magistrate judge (#6). 28 U.S.C. § 636(c).

I. DISCUSSION

Federal Rules of Civil Procedure provides in pertinent part that, subject to certain limitations, an action may be dismissed without order of the court by filing a stipulation of dismissal signed by all parties who have appeared in the action. Fed. R. Civ. P. 41(a)(1)(A)(ii). Further, after a defendant has filed an answer or motion for summary judgment, an action may be dismissed voluntarily at plaintiff's request only by order of the court and "on terms that the court considers

¹ Plaintiff has filed her opening brief (#19), in which she does not address either count 2 or 3 of her complaint.

proper." Fed. R. Civ. P. 41(a)(2). In the Ninth Circuit, "Although costs and attorney fees are often imposed upon a plaintiff who is granted a voluntary dismissal under Fed.R.Civ.P. 41(a)(2), no circuit court has held that payment of the defendant's costs and attorney fees is a prerequisite to an order granting voluntary dismissal." Stevedoring Servs. of Am. v. Armilla Int'l B.V., 889 F.2d 919, 921 (9th Cir. 1989) (and cases cited). Here, plaintiff requests that dismissal be without prejudice and without costs to either party.

The court finds that, in the circumstances, this action should be dismissed as to plaintiff's counts 2 and 3, without prejudice and without costs imposed on either party.

II. ORDER

For the foregoing reasons, plaintiff's motion to dismiss counts of the complaint relating to FOIA, counts 2 and 3 (#20), is granted, without prejudice and without costs to either party.

DATED this 11 day of August, 2008.



UNITED STATES MAGISTRATE JUDGE